

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nathaniel Flack	Team: Squad #5	CCRB Case #: 201706510	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 08/05/2017 , Sunday, 08/06/2017 2:20 AM	Location of Incident: In front of 1733 East 36th Street	Precinct: 63	18 Mo. SOL 2/6/2019	EO SOL 2/6/2019	
Date/Time CV Reported Sun, 08/06/2017 8:17 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 08/06/2017 8:17 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jonathan Bourne	18854	958321	063 PCT
2. POM Ardit Ymeri	19585	959391	063 PCT
3. LT Vito Ardito	00000	918705	063 PCT
4. An officer			063 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Justin Barberi	25008	957356	063 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Vito Ardito	Abuse: Lieutenant Vito Ardito stopped § 87(2)(b)	
B.LT Vito Ardito	Abuse: Lieutenant Vito Ardito stopped § 87(2)(b)	
C.LT Vito Ardito	Force: Lieutenant Vito Ardito used physical force against § 87(2)(b)	
D.POM Ardit Ymeri	Force: Police Officer Ardit Ymeri used physical force against § 87(2)(b)	
E. An officer	Abuse: An officer searched § 87(2)(b)	
F.LT Vito Ardito	Abuse: Lieutenant Vito Ardito detained § 87(2)(b)	
G.LT Vito Ardito	Discourtesy: Lieutenant Vito Ardito spoke discourteously to § 87(2)(b)	
H.LT Vito Ardito	Abuse: Lieutenant Vito Ardito threatened to arrest § 87(2)(b)	
I.POM Jonathan Bourne	Off. Language: Police Officer Jonathan Bourne made remarks to § 87(2)(b) based upon race.	

## Case Summary

§ 87(2)(b) filed this complaint with the CCRB via the Call Processing System on August 6, 2017, on behalf of his § 87(2)(b) son, § 87(2)(b) and § 87(2)(b) § 87(2)(b) friend, § 87(2)(b).

On August 6, 2017, at approximately 2:20 am, § 87(2)(b) received a text message § 87(2)(b) who had noticed that someone was following him after he purchased marijuana near King's Plaza Shopping Center in Brooklyn. § 87(2)(b) rode his bicycle and met § 87(2)(b) in the vicinity of 1733 East 36<sup>th</sup> Street in Brooklyn, where they were stopped by Lt. Vito Ardito, PO Ardit Ymeri, PO Justin Barberi, and PO Jonathan Bourne, all of the 63<sup>rd</sup> Precinct (**Allegation A** and **Allegation B**). Lt. Ardito and PO Ymeri reportedly took § 87(2)(b) to the ground (**Allegation C** and **Allegation D**), while § 87(2)(b) fled, pursued by PO Bourne and PO Barberi. An unidentified officer searched § 87(2)(b)'s backpack and marijuana was recovered (**Allegation E**) and § 87(2)(b) was placed under arrest. § 87(2)(b) was also placed under arrest following the discovery of § 87(2)(b)'s marijuana (**Allegation F**). Lt. Ardito allegedly told § 87(2)(b) to, "Shut the hell up" (**Allegation G**), called him a "loser" and a disappointment to his family, and said that if § 87(2)(b) continued to protest his arrest, he would be taken to Central Booking, (**Allegation H**) where he would be raped (**Allegation G, continued**). PO Bourne allegedly accused § 87(2)(b) of wanting to be an "Asian Pablo Escobar" (**Allegation I**). § 87(2)(b) and § 87(2)(b) were transported to the 63<sup>rd</sup> Precinct Stationhouse. After interviewing § 87(2)(b) Lt. Ardito released both he and § 87(2)(b) received a summons for marijuana possession, while § 87(2)(b) received a summons for riding a bicycle on the sidewalk.

No video footage was available for this incident.

### Mediation, Civil, and Criminal Histories

- § 87(2)(b) and § 87(2)(b) both declined mediation.
- As of November 16, 2017, no Notice of Claim has been filed regarding this incident, per the Office of the Comptroller (Board Review 15).
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs) § 87(2)(b)

### Civilian and Subject Officer CCRB Histories

- This is the first CCRB complaint for both § 87(2)(b) and § 87(2)(b) (Board Review 02).
- In 20 years with NYPD, Lt. Ardito has been the subject of 10 prior allegations in seven prior complaints. None of these allegations against him were substantiated and § 87(2)(b) § 87(2)(b)
- In two years with the NYPD, PO Bourne has been a subject of 7 allegations in one prior complaint. None of these allegations was substantiated. § 87(2)(g) § 87(2)(g) Three allegations against him in CCRB case number 201709090 (Frisk, Physical Force, Question) are currently under investigation.
- PO Ymeri has no prior complaints against him in two years with the NYPD.

## Findings and Recommendations

### Subject Officer Identification

- § 87(2)(g)

### Allegation A – Abuse of Authority: Lieutenant Vito Ardito stopped § 87(2)(b)

### Allegation B – Abuse of Authority: Lieutenant Vito Ardito stopped § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) were generally consistent throughout their statements (Board Review 03, Board Review 04, Board Review 05, Board Review 06), and their statements were consistent with text messages from the incident which § 87(2)(b) provided to the investigation (Board Review 07). § 87(2)(b) alerted § 87(2)(b) that he feared someone was following him after he purchased marijuana near the King's Plaza Shopping Center. § 87(2)(b) rode his bicycle in the street to meet § 87(2)(b) and walk him home. § 87(2)(b) dismounted from his bicycle and waited for § 87(2)(b) on the sidewalk. They greeted each other with a "dap" in which they slid their hands briefly together. They walked approximately half of a block towards § 87(2)(b)'s house before an unmarked RMP stopped alongside them and the officers exited the vehicle running towards them.

Lt. Ardito (Board Review 08) said that he was alone conducting surveillance in Sector B, which has the most narcotics arrests of any area in the 63<sup>rd</sup> Precinct, when he observed § 87(2)(b) pacing nervously on a corner and making several phone calls. Lt. Ardito did not see § 87(2)(b) interact with anyone or engage in any narcotics transaction at this location. § 87(2)(b) began to walk alone towards 36<sup>th</sup> Street, and Lt. Ardito followed him before observing § 87(2)(b) approach § 87(2)(b) riding his bicycle for approximately one third of a block on the sidewalk, before dismounting. § 87(2)(b) and § 87(2)(b) "cupped their hands together," before § 87(2)(b) lowered his hand to his pants pocket, in a motion lasting several seconds. Lt. Ardito stated he was 60 to 75 feet away and could see no objects in the hands of either man. Lt. Ardito believed he had observed a narcotics transaction in which § 87(2)(b) was the buyer and § 87(2)(b) was the seller, based on his experience conducting over 3,000 narcotics arrests. PO Bourne, PO Barberi, and PO Ymeri arrived within a minute and joined Lt. Ardito, who approached § 87(2)(b) and § 87(2)(b) and said, "Police, don't move."

The testimony of PO Ymeri (Board Review 09), PO Barberi (Board Review 10), and PO Bourne (Board Review 11), was consistent that none witnessed any narcotics transaction, and that they stopped § 87(2)(b) and § 87(2)(b) based on Lt. Ardito's observation and instructions. Solely PO Bourne said that § 87(2)(b) was riding his bicycle on the sidewalk when he was stopped, before dismounting when the officers exited the vehicle.

In order to justify a stop, an officer must have a reasonable suspicion that the person stopped was committing a crime. People v. De Bour, 40 N.Y. 2d 210 (1973) (Board Review 14). An officer must observe actual narcotics or currency exchanged in order to have a reasonable suspicion that a hand-to-hand transaction has occurred, even where an officer has training in identifying such transactions and the observation occurs at a location known for such transactions. People v. Loper, 115 A.D.3d 875 (2014) (Board Review 13). Reasonable suspicion cannot be imputed to person due to their proximity to a different person known to have committed a crime. People v.



resist. PO Ymeri assisted Lt. Ardito in pushing § 87(2)(b) forward onto the ground. § 87(2)(b) was on the ground approximately 10 seconds after Lt. Ardito first made contact with him, and was then placed in handcuffs. § 87(2)(b) fled on foot upon being stopped and did not see § 87(2)(b) being taken to the ground.

Lt. Ardito said that he and PO Ymeri approached § 87(2)(b) who began asking repeatedly why he was being stopped in a loud tone of voice. Lt. Ardito learned within several minutes that marijuana had been recovered from § 87(2)(b) (see below under Allegation E), and § 87(2)(b) who had calmed down, complied as he was placed under arrest (see below under Allegation F). Lt. Ardito denied that § 87(2)(b) was taken to the ground or that any force was used against him.

PO Ymeri (Board Review 09) said that when he and Lt. Ardito approached § 87(2)(b) he was yelling, refusing to answer questions, and “throwing” his hands in the officers’ faces. His hands were “going up and down” and did not touch any officer’s face. PO Ymeri said he did not know whether § 87(2)(b) was gesturing or attempting to strike officers. PO Ymeri began placing § 87(2)(b) in handcuffs, but § 87(2)(b) tried to push PO Ymeri away with a hand on his chest. PO Ymeri got one handcuff on § 87(2)(b) but he was still moving his arms causing the loose cuff to swing around. Lt. Ardito and PO Ymeri then each took hold of one of § 87(2)(b) arms, and “took him down” onto his chest in a motion lasting several seconds, before placing him in handcuffs.

PO Bourne and PO Barberi were chasing § 87(2)(b) and did not see any force used against § 87(2)(b). PO Barberi said that § 87(2)(b) was in handcuffs but not on the ground when they returned to the RMP. PO Bourne did not recall whether § 87(2)(b) was on the ground or in handcuffs when he returned to the RMP with PO Barberi.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. Patrol Guide, 221-01 (Board Review 12).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

Therefore, the disposition rests on whether this use of force was reasonable. By Lt. Ardito's own account, § 87(2)(b) was compliant when placed in custody. § 87(2)(b) is § 87(2)(b) and weighs 130 lbs., compared to Lt. Ardito's 260 lbs. and PO Ymeri's 185 lbs. Neither Lt. Ardito nor PO Ymeri observed anything suggesting § 87(2)(b) was armed. Lt. Ardito asserted no physically combative or resistant behavior on § 87(2)(b) part, and did not corroborate PO Ymeri's claim that § 87(2)(b) resisted being placed in handcuffs or tried to push PO Ymeri away. § 87(2)(g)

§ 87(2)(b) was not suspected of any violent offense and was not observed engaging in any violent behavior prior to being stopped.

§ 87(2)(g)

**Allegation E – Abuse of Authority: An officer searched § 87(2)(b)**

§ 87(2)(b) said that as he ran from the officers, he took off his backpack and dropped it. He did not see any officer search the backpack. § 87(2)(b) did not see any search of § 87(2)(b)'s bag.

Lt. Ardito said that either PO Bourne or PO Barberi told him after walking § 87(2)(b) back to the RMP that marijuana had been recovered from § 87(2)(b) but Lt. Ardito did not know who recovered it or from where.

PO Barberi said that he recovered § 87(2)(b)'s bag, though he said that the marijuana was not recovered from the bag until he was at the stationhouse. PO Bourne did not know whether § 87(2)(b)'s bag was searched at the scene. PO Ymeri said that the marijuana was recovered only later at the stationhouse.

Where a civilian intentionally discards a bag, rather than unintentionally dropping it, they no longer have an expectation of privacy in the contents of the bag, and no probable cause is required to search it. People v. Marrero, 173 A.D.2d 244 (1991) (Board Review 18).

§ 87(2)(g)

**Allegation F – Abuse of Authority: Lieutenant Vito Ardito detained § 87(2)(b)**

§ 87(2)(b) and § 87(2)(b) were consistent that § 87(2)(b) was detained and taken to the stationhouse along with § 87(2)(b). Neither was aware at what point the marijuana was recovered.

Lt. Ardito said that after being told that marijuana had been recovered from § 87(2)(b) he placed § 87(2)(b) under arrest and removed him to the stationhouse based on his observation of what he believed at the time to be a drug transaction. At the stationhouse, Lt. Ardito interviewed § 87(2)(b) who said that he had purchased the marijuana earlier from someone else. Lt. Ardito released both § 87(2)(b) and § 87(2)(b) with summonses. Lt. Ardito stated that he believed § 87(2)(b) that § 87(2)(b) had not sold him the marijuana.

PO Barberi said that § 87(2)(b) made a statement on the scene to the effect that § 87(2)(b) had sold him marijuana. Otherwise, officer testimony was consistent that § 87(2)(b) was detained based solely on Lt. Ardito's earlier observation of the alleged transaction. No officer indicated an issue obtaining § 87(2)(b) identification.

An officer may arrest a civilian if they have reasonable cause to believe that the person has committed an offense. Patrol Guide, 208-01 (Board Review 21). Any person operating a bicycle upon a sidewalk shall be issued an Environmental Control Board (ECB) Notice of Violation and Hearing. Officers should effect the arrest of a violator as a last resort, and only when the violation committed has criminal sanctions in addition to civil penalties that may be imposed by the Environmental Control Board and a desk officer directs that an arrest be made. The Environmental Control Board has civil jurisdiction only; therefore, an arrest may not be made for a violation returnable solely to that agency. Patrol Guide, 209-12 (Board Review 19).

§ 87(2)(g)  
[REDACTED]

**Allegation G – Discourtesy: Lieutenant Vito Ardito spoke discourteously to § 87(2)(b)**

[REDACTED]

**Allegation H – Abuse of Authority: Lieutenant Vito Ardito threatened to arrest § 87(2)(b)**

[REDACTED]

**Allegation I – Offensive Language: Police Officer Jonathan Bourne made remarks to § 87(2)(b) based upon race.**

§ 87(2)(b) said that after being placed in handcuffs, he protested his arrest, and a verbal exchange ensued during which Lt. Ardito told § 87(2)(b) "You must be such a disappointment to your family;" told § 87(2)(b) he was "such a loser;" told § 87(2)(b) to "shut the hell up;" and told § 87(2)(b) that he would be taken to Central Booking," where § 87(2)(b) was, "going to get raped." As § 87(2)(b) was driven to the stationhouse, PO Bourne said, in an apparent reference to § 87(2)(b) "He thinks he's an Asian Pablo Escobar."

§ 87(2)(b) said that after he was brought back to the RMP, Lt. Ardito and PO Bourne were "antagonizing" § 87(2)(b) recalled PO Bourne saying to § 87(2)(b) that he must be such a disappointment to his family.

Lt. Ardito and PO Bourne both denied making any of the alleged statements, and neither recalled any other officer making any of the alleged statements. Neither PO Barberi nor PO Ymeri heard Lt. Ardito or PO Bourne make any of these statements, nor did any officer acknowledge using or witness the use of profanity or remarks based upon race.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Squad: 5

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date